OFFICE OF TAX APPEALS STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18113968
M. CEROLI	
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)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: M. Ceroli

For Respondent: David Kowalczyk, Tax Counsel

T. STANLEY, Administrative Law Judge: On June 24, 2020, this panel issued an Opinion sustaining Franchise Tax Board's (FTB) action denying appellant's claim for refund for taxable year 2010, due to the expiration of the statute of limitations. By letter dated July 14, 2020, appellant filed a timely petition for rehearing (Petition). Upon consideration of appellant's Petition, we conclude that the grounds set forth therein do not meet the requirements for a rehearing under California Code of Regulations, title 18, section 30604.

A rehearing may be granted where one of the following grounds exist and the rights of the filing party (here, appellant) are materially affected: (a) an irregularity in the appeal proceedings which occurred prior to issuance of the written opinion and prevented fair consideration of the appeal; (b) accident or surprise which occurred during the appeal proceedings and prior to the issuance of the written opinion, which ordinary caution could not have prevented; (c) newly discovered, relevant evidence, which the filing party could not have reasonably discovered and provided prior to issuance of the written opinion; (d) insufficient evidence to justify the written opinion or the opinion is contrary to law; or (e) an error in law. (Cal. Code Regs., tit. 18, § 30604(a)–(e); *Appeal of Do*, 2018-OTA-002P.)

Although not expressly stated, it appears that appellant claims to have newly discovered evidence; namely, emails between appellant and tax preparer, J. Streeter, on March 5, 2013, in which appellant and J. Streeter discuss "some papers from the state." J. Streeter's response was

to request Prudential statements that appellant agreed to send. Appellant already submitted most of the email chain prior to the hearing. An additional email to J. Streeter from appellant informs J. Streeter that "the [P]rudential papers are on the way." Appellant does not explain why this additional email could not have been provided prior to the issuance of the Opinion, nor how it is relevant to the determination of whether appellant was financially disabled between the statute of limitations deadline to file a claim for refund and when appellant actually filed a claim for refund in August 2018. Appellant fails to raise any other proper grounds for rehearing. Instead, appellant's Petition is based on essentially the same arguments previously presented on appeal which were considered and rejected in the Opinion; for example, appellant continues to argue that he relied on his tax preparer to handle his liability with FTB as a result of his medical condition. Appellant's attempt to reargue the same issue does not constitute grounds for a rehearing. (*Appeal of Smith*, 2018-OTA-154P.)

Accordingly, appellant's Petition is hereby denied.

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Teresa A. Stanley

Administrative Law Judge

We concur:

- DocuSigned by:

Daniel Cho

Daniel K. Cho

Administrative Law Judge

Date Issued: <u>10/14/2020</u>

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v Judge Administrative Law Judge